

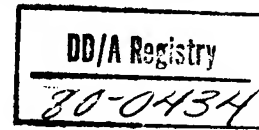
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<b>TRANSMITTAL SLIP</b>		<b>DATE</b>
<b>TO:</b>		
<b>ROOM</b>		
7024		
<b>REMARKS:</b>		
D/Log - FYI <del>Do not</del> May be of interest to Log's activities. OS received cc. 3		
<b>FROM:</b>		
DLC		
<b>ROOM NO.</b>	<b>BUILDING</b>	<b>EXTENSION</b>

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)



OLC 80-0336

8 February 1980

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MEMORANDUM FOR:

~~DDA~~ -  
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FROM:

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Chief, Legislation Division, OLC

SUBJECT:

Bills Dealing with Safety in the  
Federal Workplace

1. Attached are two bills, H.R. 5642 and S. 2153, which would amend the Occupational Safety and Health Act of 1970. Neither bill is scheduled for Committee action. H.R. 5642 quite extensively amends Chapter 79 of Title 5, United States Code, to provide for the application of occupational safety and health standards to the Federal Workplace. Section 7909 of the bill provides that the Office of Personnel Management may allow reasonable variations, tolerances, and exemptions to and from one or more provisions of this chapter as the Office may find necessary and proper to avoid serious impairment of the national defense. This language may not be sufficient to cover the Agency's national security considerations.

2. S. 2153 merely adds a section to the Occupational Safety and Health Act of 1970 to concentrate enforcement activities on hazardous workplaces and encourage self-initiative in improving occupational safety and health. The bill provides incentives such as exemptions from safety inspections and exemptions from or reduction in most civil penalties for violations of OSHA safety standards if workplaces have a good safety record and maintain advisory safety committees and advisory consultation programs.

3. We would appreciate any comments you might have on these two bills in order to determine their impact on the Agency.

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Attachments

OL 0 0743

96TH CONGRESS  
1ST SESSION

# H. R. 5642

To amend chapter 79 of title 5 of the United States Code to provide for the application of occupational safety and health standards to the Federal workplace, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 1979

Mr. CLAY introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

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## A BILL

To amend chapter 79 of title 5 of the United States Code to provide for the application of occupational safety and health standards to the Federal workplace, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Federal Employee Occu-  
4       pational Safety and Health Act of 1979".

5       SEC. 2. (a) Chapter 79 of title 5, United States Code, is  
6       amended to read as follows:

1                   **“CHAPTER 79—OCCUPATIONAL SAFETY AND**  
2                                   **HEALTH**

- "Sec.
- "7901. Definitions.
- "7902. Duties.
- "7903. Inspections, investigations, and recordkeeping.
- "7904. Citations.
- "7905. Procedure for enforcement.
- "7906. Review.
- "7907. Procedures to counteract imminent dangers.
- "7908. Representation in civil litigation.
- "7909. Variations, tolerances, and exemptions.
- "7910. Penalties.
- "7911. Training and employee education.
- "7912. Health service programs.
- "7913. Safety programs in maritime employment.
- "7914. Protective clothing and equipment.
- "7915. Statistics.
- "7916. Annual report.
- "7917. Safety program and responsibilities applicable to the Office of Personnel Management.
- "7918. Regulations.

### 3 “§ 7901. Definitions

4 “(a) For the purpose of this chapter—

5 “(1) ‘agency’ means—

6 “(A) an Executive agency;

7 “(B) the Postal Rate Commission; and

8 “(C) the United States Postal Service;

9 but does not include the Office of Personnel Manage-  
10 ment;

11 “(2) ‘employee’ means an employee of an agency;

12           “(3) ‘person’ means one or more individuals, part-  
13       nerships, associations, corporations, business trusts,  
14       legal representatives, or any organized group of  
15       persons;

1           “(4) ‘State’ means a State of the United States,  
2           the District of Columbia, and any territory or posses-  
3           sion of the United States; and

4           “(5) ‘safety and health standard’ means a stand-  
5           ard which has been promulgated under section 6 of the  
6           Occupational Safety and Health Act of 1970 (29  
7           U.S.C. 655).

8           “(b) In the application of section 6 of the Occupational  
9           Safety and Health Act of 1970 (29 U.S.C. 255) to safety and  
10          health standards in the case of employees—

11          “(1) ‘employer’, as used in that section, shall be  
12          construed to mean—

13                  “(A) an Executive agency;

14                  “(B) the Postal Rate Commission; and

15                  “(C) the United States Postal Service;

16          but does not include the Office of Personnel Manage-  
17          ment; and

18          “(2) ‘employee’, as used in that section, means an  
19          employee of an agency.

20       **“§ 7902. Duties**

21          “(a) Each agency—

22                  “(1) shall furnish to each of its employees employ-  
23                  ment and a place of employment which are free from  
24                  recognized hazards that are causing or are likely to

1       cause death or serious physical harm to its employees;  
2       and

3           “(2) shall comply with safety and health  
4       standards.

5       “(b) Each employee shall comply with safety and health  
6       standards, and with all rules, regulations, and orders issued  
7       pursuant to this chapter, which are applicable to the employ-  
8       ee’s own actions and conduct.

9       **“§ 7903. Inspections, investigations, and recordkeeping**

10       “(a) In order to carry out the purpose of this chapter,  
11       the Office of Personnel Management, after presenting appro-  
12       priate credentials to the head of an agency, or a designee of  
13       the head of the agency, may—

14           “(1) enter without delay and at reasonable times  
15       any factory, plant, establishment, construction site,  
16       office, or other area, workplace, or environment where  
17       work is performed by an employee of that agency;

18           “(2) inspect and investigate during regular work-  
19       ing hours and at other reasonable times, and within  
20       reasonable limits and in a reasonable manner, any such  
21       place of employment and all pertinent conditions,  
22       structures, machines, apparatus, devices, equipment,  
23       and materials therein; and

1           “(3) question privately the head of the agency,  
2           the designee of the head of the agency, or any employ-  
3           ee of the agency.

4           “(b) In making inspections and investigations under this  
5 chapter, the Office may require the attendance and testimony  
6 of witnesses and the production of evidence under oath. Wit-  
7 nesses shall be paid the same fees and mileage that are paid  
8 witnesses in the courts of the United States. In the case of  
9 any contumacy or failure or refusal of any person to obey  
10 such an order, any district court of the United States or the  
11 United States court of any territory or possession, within the  
12 jurisdiction of which the person is found, resides, or transacts  
13 business, shall, upon the application by the Office, have juris-  
14 diction to issue to the person an order requiring the person to  
15 appear to produce evidence if, as, and when so ordered and  
16 to give testimony relating to the matter under investigation  
17 or in question. Any failure to obey any such order of the  
18 court may be punished by the court as a contempt thereof.

19           “(c)(1) Each head of an agency shall make, keep, pre-  
20 serve, and make available to the Office such records regard-  
21 ing the agency's activities as the Office may prescribe by  
22 regulation as necessary or appropriate for the enforcement of  
23 this chapter or for developing information regarding the  
24 causes and prevention of occupational accidents and illnesses.  
25 In order to carry out the provisions of this paragraph the

1 regulations may include provisions requiring heads of agen-  
2 cies to conduct periodic inspections. The Office shall also  
3 issue regulations requiring heads of agencies, through posting  
4 of notices or other appropriate means, to keep employees of  
5 the agencies informed of their protections and obligations  
6 under this chapter, including the provisions of applicable  
7 safety and health standards.

8       “(2) The Office shall prescribe regulations requiring  
9 heads of agencies to maintain accurate records of, and to  
10 make periodic reports on, work-related deaths, injuries, and  
11 illnesses other than minor injuries which require only first aid  
12 treatment and which do not involve medical treatment, loss  
13 of consciousness, restriction of work or motion, or transfer to  
14 another job.

15       “(3) The Office shall issue regulations requiring heads of  
16 agencies to maintain accurate records of employee exposures  
17 to potentially toxic materials or harmful physical agents  
18 which are required to be monitored or measured under any  
19 safety and health standard. The regulations shall provide em-  
20 ployees or their representatives with an opportunity to ob-  
21 serve the monitoring or measuring and to have access to the  
22 records thereof. The regulations shall make appropriate pro-  
23 vision for each employee or former employee to have access  
24 to such records as will indicate the employee's own exposure  
25 to toxic materials or harmful physical agents. Each head of



1 an agency shall promptly notify any employee who has been  
2 or is being exposed to toxic materials or harmful physical  
3 agents in concentrations or at levels which exceed those pre-  
4 scribed by any applicable safety and health standard, and  
5 shall inform any employee who is being so exposed of the  
6 corrective action being taken.

7       “(d) Any information obtained by the Office under this  
8 chapter shall be obtained with a minimum burden upon agen-  
9 cies. Unnecessary duplication of efforts in obtaining informa-  
10 tion shall be reduced to the maximum extent feasible.

11       “(e) Subject to regulations prescribed by the Office, a  
12 representative of the agency and a representative authorized  
13 by the employees of the agency shall be given an opportunity  
14 to accompany the authorized representative of the Office  
15 during the physical inspection of any workplace under sub-  
16 section (a) of this section for the purpose of aiding the inspec-  
17 tion. In any case in which there is no authorized employee  
18 representative, the authorized representative of the Office  
19 shall consult with a reasonable number of employees con-  
20 cerning matters of health and safety in the workplace.

21       “(f)(1) Any employee or representative of an employee  
22 who believes that a violation of a safety or health standard  
23 exists which threatens physical harm or that an imminent  
24 danger exists may request an inspection by giving notice to  
25 the Office of the violation or danger. Any such notice shall be

1 reduced to writing, shall set forth with reasonable particular-  
2 ity the grounds for the notice, and shall be signed by the  
3 employee or representative of the employee. A copy of the  
4 notice shall be provided to the head of the agency or the  
5 designee of head of the agency no later than at the time of  
6 the inspection. On the request of the person giving the notice,  
7 the name of the person and the names of individual employ-  
8 ees referred to therein shall not appear in any such copy or  
9 on any record published, released, or made available pursu-  
10 ant to subsection (g) of this section.

11       “(2) In any case in which, after receipt of the notifica-  
12 tion, the Office determines that there are reasonable grounds  
13 to believe that such a violation or danger exists, the Office  
14 shall make a special inspection in accordance with the provi-  
15 sions of this section as soon as practicable to determine if  
16 such a violation or danger exists. If the Office determines  
17 there are no reasonable grounds to believe that a violation or  
18 danger exists, the Office shall notify the employee or repre-  
19 sentative of the employee in writing of the determination.

20       “(g)(1) Before or during any inspection of a workplace,  
21 any employee or representative of the employee employed in  
22 the workplace may notify the Office or any representative of  
23 the Office responsible for conducting the inspection, in writ-  
24 ing, of any violation of this chapter which the employee

1 or the representative has reason to believe exists in the  
2 workplace.

3       “(2) The Office shall, by regulation, establish procedures  
4 for informal review of any refusal by a representative of the  
5 Office to issue a citation with respect to any such alleged  
6 violation and shall furnish the employee or representative re-  
7 questing such review a written statement of the reasons for  
8 the Office’s final disposition of the case.

9       “(h)(1) The Office may compile, analyze, and publish,  
10 either in summary or detailed form, all reports or information  
11 obtained under this section.

12       “(2) The Office shall prescribe rules and regulations to  
13 carry out its responsibilities under this chapter, including  
14 rules and regulations relating to the inspection of any place  
15 of employment under the control of an agency.

16 **“§ 7904. Citations**

17       “(a) In any case in which, after inspection or investiga-  
18 tion, the Office of Personnel Management considers that the  
19 head of an agency has violated a requirement of section 7902  
20 of this title, of any safety and health standard, or of any  
21 order, rule, or regulation prescribed pursuant to this title, the  
22 Office shall with reasonable promptness issue a citation to  
23 the head of the agency. Each citation shall be in writing and  
24 shall describe with particularity the nature of the violation,  
25 including a reference to the provision of this title, the stand-

1 ard, or the regulation alleged to have been violated. In addi-  
2 tion, the citation shall fix a reasonable time for the abatement  
3 of the violation. The Office may prescribe procedures for the  
4 issuance of a notice in lieu of a citation with respect to minor  
5 violations which have no direct or immediate relationship to  
6 safety or health.

7 “(b) Each citation issued under this section, or a copy or  
8 copies thereof, shall be prominently posted, as required by  
9 regulations which shall be prescribed by the Office, at or near  
10 each place at which a violation referred to in the citation  
11 occurred.

12 “(c) No citation may be issued under this section after  
13 the end of the 180-day period following the date of the occur-  
14 rence of any violation.

15 **“§ 7905. Procedure for enforcement**

16 “(a)(1) In any case in which, after an inspection or in-  
17 vestigation, the Office of Personnel Management issues a ci-  
18 tation under section 7904(a) of this title, the Office shall,  
19 within a reasonable time after the termination of the inspec-  
20 tion or investigation, notify the head of the agency by certi-  
21 fied mail—

22 “(A) of the penalty, if any, proposed to be as-  
23 sessed under section 7910 of this title; and

24 “(B) that the head of the agency must, during the  
25 period of 15 working days following the date of the re-

1 receipt of the notice, notify the Office of any decision by  
2 the head of the agency to contest the citation or pro-  
3 posed assessment of penalty.

4 “(2) In any case in which—

5 “(A) the head of the agency fails to notify the  
6 Office, during the period of 15 working days following  
7 the date of the receipt of the notice, that the head of  
8 the agency intends to contest the citation or proposed  
9 assessment of penalty; and

10 “(B) no notice is filed by any employee of the  
11 agency or representative of employees of the agency  
12 under subsection (c) of this section within that period;  
13 the citation and the assessment, as proposed, shall be consid-  
14 ered a final order of the Occupational Safety and Health  
15 Review Commission and not subject to review by any court  
16 or agency.

17 “(b)(1) In any case in which the Office has reason to  
18 believe that the head of an agency has failed to correct a  
19 violation for which a citation has been issued within the  
20 period permitted for its correction, the Office shall notify the  
21 head of the agency by certified mail—

22 “(A) of the failure and of the penalty proposed to  
23 be assessed under section 7910 of this title by reason  
24 of the failure; and

1           “(B) that the head of the agency must notify the  
2           Office, during the period of 15 working days following  
3           the date of the receipt of the notice, that the head of  
4           the agency wishes to contest the Office’s notification or  
5           the proposed assessment of penalty.

6           For the purpose of this paragraph, the period permitted for  
7           the correction of a violation shall not begin to run until the  
8           entry of a final order by the Commission in the case of any  
9           review proceedings under this section initiated by the head of  
10          an agency in good faith and not solely for delay or avoidance  
11          of penalties.

12          “(2) In any case in which, during the period of 15 work-  
13          ing days following the date of the receipt of the notification  
14          issued by the Office, the head of the agency fails to notify the  
15          Office that the head of the agency intends to contest the noti-  
16          fication or proposed assessment of penalty, the notification  
17          and assessment, as proposed, shall be considered a final order  
18          of the Commission and not subject to review by any court or  
19          agency.

20          “(c)(1) In any case in which—

21                 “(A) the head of an agency notifies the Office that  
22                 the head of the agency intends to contest a citation  
23                 issued under section 7904(a) of this title or a notifica-  
24                 tion issued under subsection (a) or (b) of this section; or

1           “(B) during the period of 15 working days follow-  
2       ing the date of the issuance of a citation under section  
3       7904(a) of this title, any employee or representative of  
4       employees files a notice with the Office alleging that  
5       the period of time fixed in the citation for the abate-  
6       ment of the violation is unreasonable;  
7       the Office shall immediately advise the Commission of the  
8       notification, and the Commission shall afford an opportunity  
9       for a hearing (in accordance with section 554 of this title but  
10      without regard to subsection (a)(3) of such section). The  
11      Commission shall thereafter issue an order, based on findings  
12      of fact, affirming, modifying, or vacating the Office’s citation  
13      or proposed penalty, or directing other appropriate relief, and  
14      such order shall become final 30 days after the date of its  
15      issuance.

16      “(2) Upon a showing by the head of an agency—

17           “(A) of a good faith effort to comply with the  
18      abatement requirements of a citation; and

19           “(B) that abatement has not been completed be-  
20      cause of factors beyond the reasonable control of the  
21      head of the agency;

22      the Commission, after an opportunity for a hearing as pro-  
23      vided in this subsection, shall issue an order affirming or  
24      modifying the abatement requirements in such citation.

1       “(3) The rules of procedure prescribed by the Commis-  
2 sion shall provide affected employees or representatives of  
3 affected employees an opportunity to participate as parties to  
4 hearings under this subsection.

5       **“§ 7906. Review**

6       “(a)(1) The head of any agency or any employee ad-  
7 versely affected or aggrieved by an order of the Occupational  
8 Safety and Health Review Commission issued under section  
9 7905(c) of this title may obtain a review of the order in any  
10 United States court of appeals for the circuit in which the  
11 violation is alleged to have occurred or where the agency has  
12 its principal office, or in the Court of Appeals for the District  
13 of Columbia Circuit, by filing in the court during the 60-day  
14 period following the date of the issuance of the order a writ-  
15 ten petition praying that the order be modified or set aside. A  
16 copy of the petition shall be promptly transmitted by the  
17 clerk of the court to the Commission and to the other parties,  
18 and thereafter the Commission shall file in the court the  
19 record in the proceeding as provided in section 2112 of title  
20 28. After the filing, the court shall have jurisdiction of the  
21 proceeding and of the question determined therein, and shall  
22 have power to grant such temporary relief or restraining  
23 order as it considers just and proper, and to make and enter  
24 upon the pleadings, testimony, and proceedings set forth in  
25 the record a decree affirming, modifying, or setting aside in



1 whole or in part, the order of the Commission and enforcing  
2 the order to the extent that the order is affirmed or modified.

3       “(2) The commencement of proceedings under this sub-  
4 section shall not, unless ordered by the court, operate as a  
5 stay of the order of the Commission.

6       “(3) No objection that has not been urged before the  
7 Commission shall be considered by the court, unless the fail-  
8 ure or neglect to urge such objection shall be excused be-  
9 cause of extraordinary circumstances.

10       “(4) The findings of the Commission with respect to  
11 questions of fact, if supported by substantial evidence on the  
12 record considered as a whole, shall be conclusive. If any  
13 party applies to the court for leave to adduce additional evi-  
14 dence and shows to the satisfaction of the court that the addi-  
15 tional evidence is material and that there were reasonable  
16 grounds for the failure to adduce the evidence in the hearing  
17 before the Commission, the court may order the additional  
18 evidence to be taken before the Commission and to be made a  
19 part of the record. The Commission may modify its findings  
20 as to the facts, or make new findings, by reason of additional  
21 evidence so taken and filed, and it shall file the modified or  
22 new findings and its recommendations, if any, for the modifi-  
23 cation or setting aside of its original order. Any such modified  
24 or new findings, if supported by substantial evidence on the  
25 record considered as a whole, shall be conclusive.

1       “(5) After the filing of the record with the court, the  
2 jurisdiction of the court shall be exclusive and its judgment  
3 and decree shall be final, except that the judgment shall be  
4 subject to review by the Supreme Court of the United States,  
5 as provided in section 1254 of title 28.

6       “(6) Petitions filed under this subsection shall be heard  
7 expeditiously.

8       “(b) The Office of Personnel Management may obtain  
9 review or enforcement of any final order of the Commission  
10 by filing a petition for the review or enforcement in the  
11 United States court of appeals for the circuit in which the  
12 alleged violation occurred or in which the agency involved  
13 has its principal office, and the provisions of subsection (a) of  
14 this section shall govern those proceedings to the extent ap-  
15 plicable. If no petition for review, as provided in subsection  
16 (a) of this section, is filed during the 60-day period following  
17 the date of the service of the Commission’s order, the Com-  
18 mission’s findings of fact and order shall be conclusive in con-  
19 nection with any petition for enforcement which is filed by  
20 the Office after the expiration of that 60-day period. In any  
21 such case, as well as in the case of a noncontested citation or  
22 notification by the Office which has become a final order of  
23 the Commission under section 7905 (a) or (b) of this title, the  
24 clerk of the court, unless otherwise ordered by the court,  
25 shall as soon as practicable enter a decree enforcing the order

1 and shall transmit a copy of the decree to the Office and to  
2 the head of the agency named in the petition. In any con-  
3 tempt proceeding brought to enforce a decree of a court of  
4 appeals entered pursuant to this subsection or subsection (a)  
5 of this section, the court of appeals may assess the penalties  
6 provided in section 7910 of this title, in addition to invoking  
7 any other available remedies.

8 “(c)(1) No agency may discharge or in any manner dis-  
9 criminate against any employee because the employee has—

10 “(A) filed any complaint or instituted or caused to  
11 be instituted any proceeding under or related to this  
12 chapter;

13 “(B) has testified or is about to testify in any such  
14 proceeding; or

15 “(C) has exercised on behalf of himself or others  
16 any right afforded by this chapter.

17 “(2) Any employee who believes that the employee has  
18 been discharged or otherwise discriminated against by any  
19 agency in violation of this subsection may, during the 30-day  
20 period beginning on the date on which the violation occurred  
21 or began, file a complaint with the Special Counsel alleging  
22 the violation. Upon receipt of the complaint, the Special  
23 Counsel shall undertake such investigation as the Special  
24 Counsel considers appropriate. If after the investigation the  
25 Special Counsel determines that the provisions of this subsec-

1 tion have been violated by any agency, the Special Counsel  
2 shall file a complaint with the Merit Systems Protection  
3 Board. After hearing any such complaint, the Board may for  
4 cause shown restrain violations of paragraph (1) of this sub-  
5 section and order all appropriate relief, including rehiring or  
6 reinstatement of the employee to his former position with  
7 back pay.

8 “(3) During the 90-day period following the date of the  
9 receipt of a complaint filed under this subsection, the Special  
10 Counsel shall notify the complainant of the Special Counsel’s  
11 determination under paragraph (2) of this subsection.

12 **“§7907. Procedures to counteract imminent dangers**

13 “(a)(1) The Office of Personnel Management may order  
14 any agency to restrain any conditions or practices in any  
15 place of employment under the control of that agency consti-  
16 tuting a danger which may reasonably be expected to cause  
17 death or serious physical harm immediately or before the im-  
18 minence of that danger can be eliminated through the en-  
19 forcement procedures otherwise provided by this chapter.  
20 Any order issued under this section may—

21 “(A) require such steps to be taken as may be  
22 necessary to avoid, correct, or remove the imminent  
23 danger; and

1           “(B) prohibit the employment or presence of any  
2       individual in locations or under conditions in which the  
3       imminent danger exists.

4           “(2) Paragraph (1)(B) of this subsection shall not apply  
5       with respect to individuals whose presence is necessary—

6           “(A) to avoid, correct, or remove the imminent  
7       danger;

8           “(B) to maintain the capacity of a continuous  
9       process operation to resume normal operations without  
10      a complete cessation of operations; or

11          “(C) in any case in which a cessation of oper-  
12      ations is necessary, to permit the cessation to be ac-  
13      complished in a safe and orderly manner.

14          “(b) Whenever and as soon as an inspector concludes  
15      that conditions or practices described in subsection (a) of this  
16      section exist in any place of employment under the control of  
17      an agency, the inspector shall inform the affected employees  
18      and the agency of the danger and that the inspector is recom-  
19      mending to the Office that an order be issued under subsec-  
20      tion (a) of this section.

21          “(c) If the Office arbitrarily or capriciously fails to seek  
22      relief under this section, any employee who may be injured  
23      by reason of that failure, or the representative of that em-  
24      ployee, may bring an action against the Office in the United  
25      States district court for the district in which the imminent

1 danger is alleged to exist or the agency involved has its prin-  
2 cipal office, or in the United States District Court for the  
3 District of Columbia, for a writ of mandamus to compel the  
4 Office to issue such an order and for such further relief as  
5 may be appropriate.

6 **“§ 7908. Representation in civil litigation**

7 “Except as provided in section 518(a) of title 28, relat-  
8 ing to litigation before the Supreme Court, attorneys desig-  
9 nated by the Director of the Office of Personnel Management  
10 may appear for and represent the Office of Personnel Man-  
11 agement in any civil litigation brought under this chapter, but  
12 all such litigation shall be subject to the direction and control  
13 of the Attorney General.

14 **“§ 7909. Variations, tolerances, and exemptions**

15 “The Office of Personnel Management, on the record,  
16 after notice and opportunity for a hearing, may provide such  
17 reasonable limitations and may prescribe such rules and regu-  
18 lations allowing reasonable variations, tolerances, and ex-  
19 emptions to and from one or more provisions of this chapter  
20 as the Office may find necessary and proper to avoid serious  
21 impairment of the national defense. Any such action shall not  
22 be in effect for more than 180 days unless the Office notifies  
23 the affected employees of the action and affords those em-  
24 ployees an opportunity for a hearing.

1   **“§7910. Penalties**

2       “(a) For the purpose of this section, in the case of any  
3 head of an agency which consists of a collegial body, any  
4 penalty applicable to the head of the agency shall be consid-  
5 ered applicable to each member thereof.

6       “(b) The head of any agency who willfully or repeatedly  
7 violates any requirement of section 7902 of this title, any  
8 safety and health standard, or any order, rule, or regulation  
9 prescribed pursuant to this title, may be assessed a civil pen-  
10 alty of not more than \$10,000 for each violation.

11       “(c) The head of any agency who has received a citation  
12 for a serious violation of any requirement of section 7902 of  
13 this title, of any safety and health standard promulgated pur-  
14 suant to section 6 of the Occupational Safety and Health Act  
15 of 1970 (29 U.S.C. 655), or of any order, rule, or regulation  
16 prescribed pursuant to this chapter, shall be assessed a civil  
17 penalty of up to \$1,000 for each such violation.

18       “(d) The head of any agency who has received a citation  
19 for a violation of any requirement of section 7902 of this title,  
20 of any safety and health standard, or of any order, rule, or  
21 regulation prescribed pursuant to this chapter may, if the vio-  
22 lation is specifically determined not to be of a serious nature,  
23 be assessed a civil penalty of up to \$1,000 for each such  
24 violation.

25       “(e) The head of any agency who fails to correct a viola-  
26 tion for which a citation has been issued under section

1 7904(a) of this title within the period permitted for its correc-  
2 tion may be assessed a civil penalty of not more than \$1,000  
3 for each day during which such failure or violation continues.  
4 Any such period shall not begin to run until the date of the  
5 final order of the Occupational Safety and Health Commis-  
6 sion in the case of any review proceeding under section 7905  
7 of this title initiated by the head of the agency in good faith  
8 and not solely for delay or avoidance of penalties.

9       “(f) The head of any agency who willfully violates any  
10 safety and health standard or any order, rule, or regulation  
11 prescribed pursuant to this chapter shall, upon conviction, if  
12 that violation caused death to any employee, be punished by  
13 a fine of not more than \$10,000 or by imprisonment for not  
14 more than 6 months, or by both, except that if the conviction  
15 is for a violation committed after a first conviction of such  
16 person, punishment shall be by a fine of not more than  
17 \$20,000 or by imprisonment for not more than one year, or  
18 by both.

19       “(g) Any person who gives advance notice of any in-  
20 spection to be conducted under this chapter, without authori-  
21 ty from the Office, shall, upon conviction, be punished by a  
22 fine of not more than \$1,000 or by imprisonment for not  
23 more than 6 months, or by both.

24       “(h) Whoever knowingly makes any false statement,  
25 representation, or certification in any application, record,



1 report, plan, or other document filed or required to be main-  
2 tained pursuant to this chapter shall, upon conviction, be  
3 punished by a fine of not more than \$10,000, or by imprison-  
4 ment for not more than 6 months, or by both.

5 “(i) Whoever kills an officer or employee of the Office  
6 while engaged in or on account of the performance of investi-  
7 gative, inspection, or law enforcement functions pursuant to  
8 this chapter shall be punished by imprisonment for any term  
9 of years or for life.

10 “(j) The head of any agency who violates any of the  
11 posting requirements, as prescribed under the provisions of  
12 this chapter, shall be assessed a civil penalty of up to \$1,000  
13 for each violation.

14 “(k) The Occupational Safety and Health Review Com-  
15 mission may assess all civil penalties provided in this section,  
16 giving due consideration to the appropriateness of the penalty  
17 with respect to the size of the agency involved, the gravity of  
18 the violation, the good faith of the head of the agency, and  
19 the history of previous violations.

20 “(l) For the purpose of this section, a serious violation  
21 shall be considered to exist in a place of employment if there  
22 is a substantial probability that death or serious physical  
23 harm could result from a condition which exists, or from one  
24 or more practices, means, methods, operations, or processes  
25 which have been adopted or are in use, in such place of em-

1 ployment, unless the head of the agency did not, and could  
2 not with the exercise of reasonable diligence, know of the  
3 presence of the violation.

4 “(m) Civil penalties owed under this chapter shall be  
5 paid to the Office for deposit into the Treasury of the United  
6 States and shall accrue to the United States and may be  
7 recovered in a civil action in the name of the United States  
8 brought in the United States district court for the district in  
9 which the violation is alleged to have occurred or in which  
10 the agency involved has its principal office.

11 **“§7911. Training and employee education**

12 “(a) The Office of Personnel Management may conduct  
13 short-term training of personnel engaged in work related to  
14 the Office’s responsibilities under this chapter.

15 “(b) The Office, in consultation with the Secretary of  
16 Health and Human Services shall—

17 “(1) provide for the establishment and supervision  
18 of programs for the education and training of heads of  
19 agencies and employees in the recognition, avoidance,  
20 and prevention of unsafe or unhealthful working condi-  
21 tions in places of employment covered by this chapter;  
22 and

23 “(2) consult with and advise heads of agencies  
24 and employees, and organizations representing heads of

1 agencies and employees, with regard to effective means  
2 of preventing occupational injuries and illnesses.

3 **“§7912. Health service programs**

4 “(a) The head of each agency may establish, within the  
5 limits of appropriations available, a health service program to  
6 promote and maintain the physical and mental fitness of em-  
7 ployees of that agency.

8 “(b) A health service program may be established by  
9 contract or otherwise, but only—

10 “(1) after consultation with the Secretary of  
11 Health and Human Services and consideration of the  
12 Secretary’s recommendations; and

13 “(2) in localities in which there is a sufficient  
14 number of employees to warrant providing the service.

15 “(c) A health service program under this section is limit-  
16 ed to—

17 “(1) treatment of on-the-job illness and dental  
18 conditions requiring emergency attention;

19 “(2) preemployment and other examinations;

20 “(3) referral of employees to private physicians  
21 and dentists; and

22 “(4) preventive programs relating to health.

23 “(d) The Secretary of Health and Human Services, on  
24 request, shall review a health service program conducted

1 under this section and shall submit comments and recommen-  
2 dations to the head of the agency concerned.

3 “(e) Any authorization under this section of the use of  
4 the professional services of physicians includes the use of the  
5 professional services of surgeons and osteopathic practition-  
6 ers within the scope of their practice as defined by State law.

7 “(f) Any health program conducted by the Tennessee  
8 Valley Authority is not affected by this section.

9 **“§7913. Safety programs in maritime employment**

10 “(a) The Secretary of Labor shall carry out a safety  
11 program under section 41(b)(1) of the Longshoremen’s and  
12 Harbor Workers’ Compensation Act (33 U.S.C. 941(b)(1))  
13 covering the employment of each employee to whom that  
14 section applies.

15 “(b) The President may—

16 “(1) establish by Executive order a safety council,  
17 composed of representatives of labor organizations rep-  
18 resenting employees referred to in subsection (a) of this  
19 section and of agencies in which the employees are  
20 employed, to serve as an advisory body to the Secre-  
21 tary in furtherance of the safety program carried out  
22 by the Secretary under subsection (a) of this section;  
23 and

1           “(2) undertake such other measures as the Presi-  
2           dent considers proper to prevent injuries and accidents  
3           to those employees.

4           “(c) The head of each agency in which are employed  
5           employees referred to in subsection (a) of this section shall  
6           develop and support an organized safety promotion to reduce  
7           accidents and injuries among those employees, encourage  
8           safe practices, and eliminate work hazards and health risks.

9           “(d) Each agency in which are employed employees re-  
10          ferred to in subsection (a) of this section shall—

11           “(1) keep a record of injuries and accidents to  
12          those employees whether or not they result in loss of  
13          time or in the payment or furnishing of benefits; and

14           “(2) make such statistical or other reports on such  
15          forms as the Secretary may prescribe by regulation.

16          “(e) The safety program carried out pursuant to this  
17          section shall be in addition to and consistent with the other  
18          requirements of this chapter. The Secretary shall consult  
19          with the Director of the Office of Personnel Management in  
20          order to carry out this subsection.

21       **“§7914. Protective clothing and equipment**

22          “Appropriations available for the procurement of sup-  
23          plies and material or equipment are available for the pur-  
24          chase and maintenance of special clothing and equipment for  
25          the protection of employees in the performance of their as-

1 signed tasks. For the purpose of this section, 'appropriations'  
2 includes funds made available by statute under section 104 of  
3 the Government Corporation Control Act (31 U.S.C. 849).

4 **"§ 7915. Statistics**

5       “(a) In order to further the purpose of this chapter, the  
6 Office of Personnel Management, in consultation with the  
7 Secretary of Health and Human Services, shall develop and  
8 maintain an effective program of collection, compilation, and  
9 analysis of occupational safety and health statistics. The pro-  
10 gram may cover all places of employment under the control  
11 of agencies. The Office shall compile accurate statistics on  
12 work injuries and illnesses which shall include all disabling,  
13 serious, or significant injuries and illnesses, whether or not  
14 involving loss of time from work, other than minor injuries  
15 requiring only first aid treatment and which do not involve  
16 medical treatment, loss of consciousness, restriction of work  
17 or motion, or transfer to another job.

18       “(b) To carry out the duties of the Office under subsec-  
19 tion (a) of this section, the Office may—

20               “(1) promote, encourage, or directly engage in  
21 programs of studies, information, and communication  
22 concerning occupational safety and health statistics;  
23 and

1           “(2) arrange, through grants or contracts, for the  
2       conduct of such research and investigations as give  
3       promise of furthering the objectives of this section.

4       “(c) The Federal share for each grant under subsection  
5       (b) of this section may be up to 50 percent of the total cost.

6       “(d) The Office may, with the consent of any State or  
7       political subdivision thereof, accept and use the services,  
8       facilities, and employees of the agencies of that State or po-  
9       litical subdivision, with or without reimbursement, in order to  
10      assist the Office in carrying out the functions of the Office  
11      under this section.

12      “(e) On the basis of the records made and kept pursuant  
13      to section 7903(c) of this title, the head of each agency shall  
14      file such reports with the Office as the Office shall prescribe  
15      by regulation and as are necessary to carry out the functions  
16      of the Office under this chapter.

17      “(f) Agreements between the Office and States pertain-  
18      ing to the collection of occupational safety and health statis-  
19      tics already in effect on the effective date of this section shall  
20      remain in effect until superseded by grants or contracts made  
21      under this chapter.

22      **“§7916. Annual report**

23      “(a) During the 120-day period beginning at the con-  
24      vening of each regular session of each Congress, the Office of

1 Personnel Management shall prepare and submit to the  
2 President for transmittal to the Congress a report on—

3 “(1) the progress toward achieving the purposes  
4 of this chapter;

5 “(2) the needs and requirements in the field of oc-  
6 cupational safety and health; and

7 “(3) any other relevent information.

8 “(b) The reports referred to in subsection (a) of this sec-  
9 tion shall include—

10 “(1) an evaluation of the degree of observance of  
11 applicable safety and health standards, and a summary  
12 of inspection and enforcement activity undertaken;

13 “(2) an analysis and evaluation of research activi-  
14 ties in connection with this chapter for which results  
15 have been obtained under governmental and nongov-  
16 ernmental sponsorship;

17 “(3) an analysis of major occupational diseases oc-  
18 curring among employees;

19 “(4) an evaluation of available control and meas-  
20 urement technology for hazards in places of employ-  
21 ment under the control of agencies for which standards  
22 or criteria have been developed during the preceding  
23 year;

24 “(5) a description of cooperative efforts undertak-  
25 en between agencies and other interested parties in the



1 implementation of this chapter during the preceding  
2 year;

3 “(6) a progress report on the development of an  
4 adequate supply of trained manpower in the field of oc-  
5 cupational safety and health available for carrying out  
6 the purposes of this chapter, including estimates of  
7 future needs and the efforts being made to meet those  
8 needs;

9 “(7) a listing of all toxic substances in industrial  
10 usage in places of employment under the control of  
11 agencies for which labeling requirements, criteria, or  
12 standards have not yet been established; and

13 “(8) such recommendations for additional legisla-  
14 tion as are considered necessary to protect the safety  
15 and health of employees and improve the administra-  
16 tion of this chapter.

17 **“§7917. Safety program and responsibilities applicable to**  
18 **the Office of Personnel Management**

19 “(a) The Director of the Office of Personnel Manage-  
20 ment shall establish and maintain an effective and compre-  
21 hensive occupational safety and health program applicable to  
22 the Office which is consistent with the standards promulgated  
23 under section 6 of the Occupational Safety and Health Act of  
24 1970 (29 U.S.C. 655). The Director shall (after consultation  
25 with representatives of the employees of the Office)—

1           “(1) provide safe and healthful places and condi-  
2           tions of employment, consistent with the standards set  
3           under that section 6;

4           “(2) acquire, maintain, and require the use of  
5           safety equipment, personal protective equipment, and  
6           devices reasonably necessary to protect employees of  
7           the Office;

8           “(3) keep adequate records of all occupational ac-  
9           cidents and illnesses for proper evaluation and neces-  
10          sary corrective action;

11          “(4) consult with the Secretary of Labor with  
12          regard to the adequacy as to form and content of rec-  
13          ords kept pursuant to paragraph (3) of this subsection;  
14          and

15          “(5) make an annual report to the Secretary with  
16          respect to occupational accidents and injuries and the  
17          Office’s program under this section.

18          “(b) The Secretary shall transmit to the President the  
19          report submitted to the Secretary under subsection (a)(5) of  
20          this section, together with the Secretary’s evaluations of and  
21          recommendations derived from the report. The President  
22          shall transmit annually to the Senate and the House of Rep-  
23          resentatives a report of the activities of the Office under this  
24          section.

1       “(c) The Secretary shall have access to records and re-  
2 ports kept and filed by the Office pursuant to subsection (a)  
3 (3) and (5) of this section.

4       **“§ 7918. Regulations**

5       “The Office of Personnel Management may prescribe  
6 regulations to carry out the provisions of this chapter.”.

7       (b) The table of chapters for part III of title 5, United  
8 States Code, is amended by striking out the item relating to  
9 chapter 79 and inserting in lieu thereof the following:

      “79 Occupational Safety and Health ..... 7901”.

10       SEC. 2. Section 19 of the Occupational Safety and  
11 Health Act of 1970 (29 U.S.C. 668) is repealed.

12       SEC. 3. The amendments made by this Act shall take  
13 effect October 1, 1980.

○

96TH CONGRESS  
1ST SESSION

# S. 2153

To amend the Occupational Safety and Health Act of 1970 to concentrate enforcement activities on hazardous workplaces and encourage self-initiative in improving occupational safety and health, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 15), 1979

Mr. SCHWEIKER (for himself, Mr. WILLIAMS, Mr. CHURCH, Mr. CRANSTON, Mr. HATCH, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Occupational Safety and Health Act of 1970 to concentrate enforcement activities on hazardous workplaces and encourage self-initiative in improving occupational safety and health, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Occupational Safety and  
4       Health Improvements Act of 1980".

5       SEC. 2. The Occupational Safety and Health Act of  
6       1970 is amended by inserting after section 4 the following  
7       new section:

1 “APPLICATION OF THIS ACT TO EMPLOYERS WITH A REC-  
2 ORD OF EFFECTIVE SELF-INITIATIVE ON OCCUPA-  
3 TIONAL SAFETY AND HEALTH

4 “SEC. 4A. (a)(1) Any employer who maintains a work-  
5 place which qualifies under the provisions of subsection (b) or  
6 (c) shall be exempt from all safety inspections and investiga-  
7 tions with respect to such workplace carried out under sec-  
8 tion 8, other than inspections or investigations conducted for  
9 the purpose of—

10 “(A) determining the causes of a serious work-  
11 place accident which resulted in the death of one or  
12 more employees or hospitalization of more than one  
13 employee;

14 “(B) determining the existence of an imminent  
15 danger or other hazard so serious in nature that it  
16 warrants the expeditious attention of the Secretary  
17 without the Secretary first providing the notice and  
18 seeking the assurances required by subparagraph (c) of  
19 this paragraph, in response to information which gives  
20 the Secretary reasonable grounds to believe such a  
21 danger or hazard exists;

22 “(C) determining whether a violation exists in re-  
23 sponse to information which gives the Secretary rea-  
24 sonable grounds to believe a violation exists if the em-  
25 ployer has first received notice from the Secretary of

1       such information and has failed to provide to the Sec-  
2       retary satisfactory assurances that appropriate action,  
3       if any, has been taken to correct the violation; or

4               “(D) determining whether proper abatement of a  
5       violation previously cited during a permitted inspection  
6       or investigation has taken place.

7       “(2) Nothing in this subsection shall limit the authority  
8       and responsibility of the Secretary to take all actions author-  
9       ized by this Act with respect to occupational health hazards,  
10      and with respect to any serious safety hazards which cannot  
11      be effectively identified by reference to occupational injury  
12      data as provided for in this section.

13       “(3) The scope of an inspection or investigation con-  
14      ducted pursuant to paragraph (1) or (2) shall be limited to the  
15      purpose of such inspection or investigation, but the Secretary  
16      may issue a citation and assess a penalty with respect to any  
17      other safety violation found during the normal course of con-  
18      ducting the inspection or investigation within such scope.

19       “(4) As used in this section, the term ‘workplace’ means  
20      a single physical location where business is conducted or  
21      where services or industrial operations are performed, except  
22      that for employers engaged in activities which are physically  
23      dispersed, the term ‘workplace’ includes all locations at  
24      which such services are performed by employees of the em-  
25      ployer engaged in such activities. Where distinctly separate

1 activities are performed at a single physical location, each  
2 activity shall be treated as a separate workplace.

3       “(b) For the purpose of identifying workplaces which  
4 qualify for the exemption provided in subsection (a), the Sec-  
5 retary shall enter into agreements with State workers’ com-  
6 pensation or other appropriate State agencies under which  
7 the State agency will prepare and submit to the Secretary  
8 annually a listing of all employers (including any other neces-  
9 sary identifying information) within such State who during  
10 the preceding year had one or more occupational injuries as  
11 reported to such agency. Each such report shall include, at  
12 least, all occupational injuries which result in two or more  
13 lost workdays. Any workplace of an employer covered by the  
14 State workers’ compensation law and the reporting require-  
15 ments of the State workers’ compensation law but not in-  
16 cluded in the listing submitted under this subsection qualifies  
17 for the exemption provided in subsection (a).

18       “(c)(1) Any workplace not qualifying for the exemption  
19 set forth in subsection (a) under subsection (b) qualifies for  
20 such exemption if during the preceding calendar year the  
21 workplace had no employee deaths caused by occupational  
22 injury and had a number of lost workday injuries which was  
23 less than or equal to the number specified in the following  
24 table:

## 5

Number of employees of the work- place:	Number of lost workday injuries:
1 to 25 .....	0.
26 to 49 .....	1.
50 to 99 .....	2.
100 to 149 .....	3.
150 to 249 .....	5.
250 to 349 .....	7.
350 to 449 .....	9.
450 to 649 .....	13.
650 to 999 .....	20.
1,000 and over .....	2 injuries per every 100 employees.

1 For purposes of this paragraph, a lost workday injury shall  
2 be any occupational injury which results in one or more lost  
3 workdays, and the number of employees of the workplace  
4 shall be the average number of full-time employees (or their  
5 equivalent) during the preceding year. No sooner than three  
6 years after the effective date of this section, and at three-year  
7 intervals thereafter, the Secretary shall have the authority to  
8 revise the above table, within comparable standards, based  
9 on changes in the national average occupational injury lost  
10 workday case rate, as published by the Secretary.

11       “(2) Each employer wishing to claim qualification for  
12 the exemption provided in subsection (a) pursuant to this sub-  
13 section shall file with the Secretary an affidavit under oath or  
14 affirmation stating that during the preceding year there were  
15 no employee deaths caused by occupational injury, the aver-  
16 age number of full-time employees (or their equivalent) em-  
17 ployed in the workplace, the number of occupational injuries  
18 which resulted in one or more lost workdays, and the maxi-  
19 mum number of such lost workday injury cases under which



1 workplaces of the size category of the workplace for which  
2 the affidavit is filed would be eligible, as provided by para-  
3 graph (1) of this subsection, for the exemption. The employer  
4 shall post a copy of this affidavit in a prominent place in the  
5 workplace.

6 “(d) The following provisions shall apply to penalties for  
7 serious and other than serious violations of a safety standard  
8 or duty:

9 “(1) No employer who maintains a workplace  
10 which qualifies for the exemption set forth in subsec-  
11 tion (a) shall be assessed a penalty under section 17(b)  
12 or 17(c) for such a violation found in such workplace  
13 if—

14 “(A) the employer maintains at such work-  
15 place an advisory safety committee as described in  
16 subsection (f)(2) and a regular consultation pro-  
17 gram as described in subsection (g) to advise and  
18 consult with the employer on occupational safety  
19 and health matters; or

20 “(B) the employer at all times during the  
21 preceding calendar year employed not more than  
22 ten employees (in which case the period during  
23 which no penalties shall be assessed pursuant to  
24 this paragraph shall be from April 1 of the year  
25 following the calendar year for which the require-

1           ments for the exemption provided by subsection  
2           (a) have been met, until the following March 31).

3           “(2) No employer of a workplace which does not  
4           qualify for the exemption provided in subsection (a) but  
5           at which there is maintained an advisory safety com-  
6           mittee as described in subsection (f)(2) and a regular  
7           consultation program as described in subsection (g)  
8           shall be assessed a civil penalty under section 17(b)  
9           which exceeds \$700 or a civil penalty under section  
10          17(c) which exceeds \$300 for each such violation found  
11          in such workplace.

12          “(e) Except as provided in subsection (d)(1)(B), the ex-  
13          emption provided by this section shall be effective from April  
14          1 of the year following the calendar year for which the appli-  
15          cable requirements are met until the following March 31, ex-  
16          cept that an affidavit filed pursuant to subsection (c) after  
17          such April 1 shall be effective five days after filing and until  
18          the following March 31.

19          “(f)(1) Any employer may consult with a workplace ad-  
20          visory safety committee for the purpose of increasing em-  
21          ployee involvement in workplace safety and health matters  
22          and improving workplace safety and health conditions.

23          “(2) An advisory safety committee qualifies an employer  
24          for the penalty limitations provided by subsection (d) if—

1           “(A) the employer regularly consults with the  
2           committee and responds to the recommendations and  
3           advice of the committee;

4           “(B) the committee meets in accordance with a  
5           regular schedule established by the committee;

6           “(C) the committee has no more members selected  
7           by the employer, if any, than the number of employee  
8           members, except if otherwise provided in an applicable  
9           collective-bargaining agreement;

10          “(D) employee members are selected each year by  
11          the labor organization representing the employees, or if  
12          there is no such organization, by a selection process  
13          which gives all interested employees an opportunity to  
14          participate on the committee or in the selection of em-  
15          ployee members of the committee; and

16          “(E) at the time of selecting employee members  
17          as prescribed under clause (D) of this paragraph, the  
18          labor organization, or if there is none, interested em-  
19          ployees, have the right to choose not to participate on  
20          the committee, in which case the employer shall no  
21          longer qualify for the penalty limitations provided by  
22          subsection (d).

23          “(g) A consultation program qualifies an employer for  
24          the penalty limitations provided by subsection (d) if such con-  
25          sultation program—

1           “(1) is provided by—

2                   “(A) approved State agencies pursuant to  
3           section 7(c)(1), section 18, or section 21(c),

4                   “(B) private business concerns under con-  
5           tract with the Secretary for the purpose of this  
6           paragraph,

7                   “(C) one or more employees of the workers’  
8           compensation insurance carrier of the employer,  
9           or of a private business concern, who are, with  
10          respect to safety matters, certified as safety pro-  
11          fessionals by the Board of Certified Safety Profes-  
12          sionals, or licensed as professional engineers with  
13          a safety specialty by any State, or, with respect  
14          to health matters, certified as industrial hygienists  
15          by the American Board of Industrial Hygiene,

16                  “(D) any other individual or private business  
17          concern meeting such competency requirements as  
18          the Secretary shall establish for the purpose of  
19          carrying out this subsection, or

20                  “(E) any combination of methods prescribed  
21          by subclauses (A) through (D) of this clause;

22          “(2) includes a review of all conditions in the  
23          workplace significantly relating to occupational safety  
24          or health during the year of qualification, or during

1       such other time period as the advisory safety commit-  
2       tee described in subsection (f)(2) may specify; and

3           “(3) includes written reports to the employer of  
4       the findings made as a result of consultations, together  
5       with such recommendations as may be appropriate, and  
6       provide for the furnishing of such reports to the adviso-  
7       ry safety committee described in subsection (f)(2).

8       “(h)(1) Every employer claiming qualification for the  
9       provisions of subsection (a) or (d) shall maintain records in an  
10      orderly manner to assure verification. The Secretary shall  
11      have access to such records. Such records may consist of  
12      injury records maintained pursuant to section 8(c), appropri-  
13      ate workers’ compensation records, documentation with re-  
14      spect to the number of employees at such establishment, min-  
15      utes of meetings of the advisory safety committee, evidence  
16      of the procedure used to select employee members of the ad-  
17      visory safety committee, verification of transmittal of written  
18      reports of the consultant, and other necessary and proper in-  
19      formation maintained in the normal course of business.

20      “(2) If the Secretary finds a workplace for which the  
21      provisions of subsection (a) or (d) are claimed does not qual-  
22      ify, the Secretary shall rule the workplace not qualified and  
23      shall notify the employer of such ruling. Such a ruling may  
24      be reviewed only by the Occupational Safety and Health Re-  
25      view Commission and a court of appeals of the United States

1 in accordance with the provisions of sections 10 and 11, and  
2 only in conjunction with the contesting of a citation, abate-  
3 ment order, or proposed penalty.

4 “(3) No report or recommendation of a consultant or  
5 advisory safety committee provided pursuant to this section,  
6 or assurance by the employer pursuant to subsection  
7 (a)(1)(B), shall be considered as evidence that a violation of  
8 this Act was willful within the meaning of section 17 (a) or  
9 (e) if the employer had a reasonable, good faith belief that the  
10 condition involved in such report, recommendation, or assur-  
11 ance, subsequently determined by the Secretary to be a viola-  
12 tion, was not a violation of this Act.

13 “(4) Notwithstanding any other provision of law, no  
14 claim of liability for an occupational illness or injury may be  
15 asserted against any advisory safety committee or provider of  
16 consultation services or against any member or employee of  
17 such committee or consultant based on any activity, relation-  
18 ship, or breach of duty within the scope of functions of such  
19 committee, consultant, or individual required or authorized  
20 pursuant to this section.

21 “(i) In order to carry out the purpose of this section, the  
22 Secretary shall—

23 “(1) provide financial, technical, and administra-  
24 tive assistance to appropriate State workers’ compen-  
25 sation agencies or other appropriate State agencies to

1 assist such agencies in making necessary modifications  
2 to procedures in order to carry out the purpose of sub-  
3 section (b);

4 “(2) report to Congress before July 1, 1982, on  
5 the participation of States under subsection (b), to-  
6 gether with an explanation of any difficulties in obtain-  
7 ing the participation of all States and recommendations  
8 for eliminating any such difficulties;

9 “(3) advise employers and employees of the provi-  
10 sions of this section, including current information on  
11 the qualifications for the exemption provided by subsec-  
12 tion (a) and the penalty limitations provided by  
13 subsection (d), and on inspection activities in which the  
14 Secretary may engage pursuant to paragraph (2) of  
15 subsection (a), through general information programs,  
16 individual notice during onsite inspections, investiga-  
17 tions, and consultations, and other practicable means;

18 “(4) require inclusion of the provisions of this sec-  
19 tion, or of similar provisions at least as effective in ac-  
20 complishing the purposes of this section, for approval  
21 of a State plan submitted pursuant to section 18(b);

22 “(5) develop, with the cooperation of State work-  
23 ers’ compensation or other appropriate State agencies,  
24 other appropriate means to identify workplaces which  
25 qualify for the exemption set forth in subsection (a) by

1 increasing utilization of State workers' compensation  
2 data, and shall have the authority to implement such  
3 means, within standards comparable to those set forth  
4 in subsection (c)(1), as an alternative to the affidavit  
5 process set forth in subsection (c)(2); and

6 “(6) explore other appropriate means to encour-  
7 age voluntary self-initiative in workplaces to improve  
8 safety and health conditions, utilizing advisory safety  
9 committees, consultation programs, and other methods,  
10 including a voluntary program of self-certification of  
11 compliance with safety and health standards and du-  
12 ties, and shall include in the Secretary's annual report  
13 required by section 26 a report on activities carried out  
14 pursuant to this clause.”.

15 SEC. 3. Section 23 of the Occupational Safety and  
16 Health Act of 1970 is amended by adding at the end thereof  
17 the following new subsection:

18 “(i) The Secretary is authorized to make grants to the  
19 workers' compensation agency or other appropriate State  
20 agency of any State which is participating or preparing to  
21 participate under section 4A(b) for the purpose of assisting  
22 such State agency to improve its program of administration  
23 of the State workers' compensation program, particularly  
24 with reference to utilization of mechanized claims processing  
25 and information retrieval systems and in connection with ac-



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1   tivities under section 4A(i)(5). There is authorized to be ap-  
2   propriated for the purpose of this subsection for each fiscal  
3   year until the end of fiscal year 1985 the sum of  
4   \$5,000,000.”.

5       SEC. 4. The amendments made by section 2 and section  
6   3 of this Act shall take effect January 1, 1981.

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